

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FREDRICK R. BACA,

Plaintiff,

vs.

No. 2:19-cv-00570-KWR-GBW

CLOVIS POLICE DEPARTMENT, *et al.*,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE’S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Magistrate Judge’s Proposed Findings and Recommended Disposition (“PFRD”) (Doc. 26), recommending that the Court grant in part and deny in part Defendant City of Clovis’s Motion to Dismiss (Doc. 17) and grant in part Defendant City of Clovis’s Motion to Strike Plaintiff’s (Second) Amended Complaint (Doc. 23).

The Magistrate Judge recommended granting in part and denying in part Defendant’s Motion to Dismiss, finding that Plaintiff’s operative complaint fails to state a claim for municipal liability under federal law pursuant to *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978), but contains a live state claim to which *Monell* is inapplicable. Doc. 26 at 4–8. The Magistrate Judge also recommended granting in part Defendant’s Motion to Strike Plaintiff’s “Amended Complaint” filed at Doc. 22, finding that the filing did not comply with either the Federal Rules of Civil Procedure or the Court’s prior order directing amendment. Doc. 26 at 9. The Magistrate Judge recommended striking the filing as the operative complaint and reinstating Plaintiff’s first Amended Complaint (Doc. 13) as the operative complaint in this matter. *Id.* at 10. The Magistrate Judge further found that the substance of Plaintiff’s “Amended Complaint” was

responsive to Defendant's Motion to Dismiss and therefore recommended not striking it from the docket entirely and instead construing it as a Response to Defendant's Motion. *Id.*

The Magistrate Judge filed his PFRD on March 17, 2021. No party has filed objections within the allotted time. Appellate review of these issues is therefore waived. *See United States v. 2121 E. 30th Street*, 73 F.3d 1057, 1059–60 (10th Cir. 1996). Failure to object to the PFRD also waives the right to *de novo* review by the district court. *See id.* at 1060; *Thomas v. Arn*, 474 U.S. 140, 149–150 (1985). Nevertheless, the Court has conducted a *de novo* review of the Magistrate Judge's findings in this case. *See 2121 E. 30th Street*, 73 F.3d at 1061. The Court hereby concurs with all of the factual and legal conclusions recited therein.

Wherefore, **IT IS HEREBY ORDERED** that:

- (i) the Magistrate Judge's PFRD (Doc. 26) is **ADOPTED**;
- (ii) Defendant City of Clovis's Motion to Dismiss (Doc. 17) is **GRANTED** in part and **DENIED** in part;
- (iii) Defendant City of Clovis's Motion to Strike (Doc. 26) is **GRANTED** in part; and
- (iv) the Clerk's Office is **DIRECTED** to revise the docket to show Plaintiff's "Amended Complaint" (Doc. 22) as a Response to Defendant City of Clovis's Motion to Dismiss (Doc. 17).


KEA W. RIGGS
UNITED STATES DISTRICT JUDGE